

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

ANACLETO ZELAYA MOLINA
3010 Patrick Henry Drive, Apt. 2
Falls Church, Virginia 22044

and

JOSE EVELIO DIAS ARGUETA
3023 Monticello Drive
Falls Church, Virginia 22042

Plaintiffs,

v.

DESI'S CHICKEN AND STEAK, INC.
6198 Arlington Blvd.
Falls Church, Virginia 22044

Serve: Bertha A. Martinez
Resident Agent
4614 Denning Avenue
Alexandria, Virginia 22312

and

BERTHA A. MARTINEZ
4614 Denning Avenue
Alexandria, Virginia 22312

Defendants.

Civil Action No. 1:17cv83
(GBL/TCB)

COMPLAINT

Plaintiffs Anacleto Zelaya Molina and Jose Evelio Dias Argueta ("Plaintiffs"), by and through their attorneys, Mary J. Craine Lombardo and Stein Sperling Bennett De Jong Driscoll PC, hereby file their Complaint against Desi's Chicken and Steak, Inc. and Bertha A. Martinez (collectively "Desi's Chicken" or Defendants"), under the Fair Labor Standards Act of 1938, 29 U.S.C. § 201, *et seq.* ("FLSA"), stating as follows:

STEIN SPERLING BENNETT
DE JONG DRISCOLL PC

ATTORNEYS AT LAW
25 WEST MIDDLE LANE
ROCKVILLE, MARYLAND 20850

TELEPHONE 301-340-2020

INTRODUCTION

Plaintiffs worked for Defendants as cooks. They worked approximately 72 hours per week and were not properly compensated for the overtime hours that they worked. Indeed, their weekly rates of pay were insufficient to cover minimum wage. Defendants have willfully violated the clear and well-established overtime provisions of the FLSA. Plaintiffs seek compensatory and statutory damages for all unpaid overtime compensation, as well as attorneys' fees and costs.

JURISDICTION & VENUE

1. This Court has subject matter jurisdiction over the causes of action alleged in this Complaint pursuant to 28 U.S.C. §§ 1331 and 1367, and 29 U.S.C. § 216.

2. Venue is proper pursuant to 28 U.S.C. § 1391.

PARTIES

3. Plaintiffs are adult residents of Virginia.

4. Defendant Desi's Chicken and Steak, Inc. is a Virginia corporation with its location and operations in Virginia.

5. Defendant Bertha A. Martinez (the "Individual Defendant") is the principal of Desi's Chicken and Steak, Inc.

6. Upon information and belief, at all times material herein, Defendants, in the aggregate and as a single enterprise, had annual gross volume of sales made or business done in an amount exceeding \$500,000.

7. The Individual Defendant controlled the day to day operations of the business.

8. The Individual Defendant had the power to hire, fire, suspend, and discipline Plaintiff.

9. The Individual Defendant supervised Plaintiffs directly or indirectly.

10. The Individual Defendant directly or indirectly set and controlled Plaintiffs' work schedule or had the power to do so.

11. The Individual Defendant directly or indirectly set and determined the rate and method of Plaintiffs' pay or had the power to do so.

12. Federal courts have made clear that individual employers are liable under the FLSA, if the employer met the economic reality test for "control." *Chao v. Mid-Atlantic Installation Services, Inc.*, 16 Fed Appx. 104 (2001).

13. The Individual Defendant would be considered an employer for purposes of individual liability because of her intrinsic involvement in the business.

FACTS

14. Plaintiff Zelaya Molina was employed by Defendants from approximately July 15, 2013 through November 15, 2015 and Plaintiff Dias Argueta worked for Defendants for several years until January 31, 2016 (the "Employment Period").

15. Plaintiff Zelaya Molina was paid a weekly rate of \$400.00 and then \$450.00.

16. Plaintiff Dias Argueta was paid a weekly rate of \$500.00.

17. Plaintiffs both worked an average of seventy-two hours per week, working six days per week.

18. Plaintiffs were paid cash.

19. Plaintiffs were not paid one and a half times their regular hourly rate for hours worked in excess of forty per week.

20. Plaintiff Zelaya Molina is owed approximately \$22,270.00 in unpaid minimum and overtime wages.

21. Plaintiff Dias Argueta is owed approximately \$17,388.00 in unpaid minimum and overtime wages.

22. Plaintiffs are owed wages that Defendants willfully failed and refused to pay to Plaintiffs in violation of federal law.

23. By statute, Defendants are required to maintain records which document the number of days Plaintiffs worked.

24. The precise number of hours worked, and wages owed, should be revealed through discovery.

25. Defendants knowingly and intentionally violated Plaintiffs' rights under federal law.

COUNT I (FLSA)

26. Plaintiffs adopt herein by reference paragraphs 1 through 25 above as if fully set forth herein.

27. At all times relevant hereto, each Defendant was an "employer" within the meaning of the FLSA. 29 U.S.C. § 203(d).

28. Defendants were engaged in "interstate commerce" within the meaning of the FLSA.

29. Each Plaintiff was an "employee" within the meaning of the FLSA.

30. Defendants were required to pay each Plaintiff compensation at the rate of one and a half times their regular hourly rate for all hours worked in excess of forty hours per week. *See* 29 U.S.C. § 207(a)(2).

31. Throughout the Employment Period, Defendants failed to compensate Plaintiffs at the rate of one and a half times their regular hourly rate for all hours worked in excess of forty hours per week.

32. In addition, Defendants were required to pay Plaintiffs at least the minimum wage.

33. Defendants' actions complained of herein constitute a willful violation of the FLSA.

34. Defendants' violation makes them liable to Plaintiffs for all unpaid minimum and overtime compensation, and an additional equal amount as liquidated damages.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter judgment against Defendants, jointly and severally, and in their favor in an amount to be determined at trial, but not less than \$79,316.00 which is two times the total wages owed, reasonable attorneys' fees and costs, and such other and further relief as the Court deems just and proper.

Respectfully submitted,

STEIN SPERLING BENNETT
DE JONG DRISCOLL PC

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